

STATE OF MICHIGAN  
COURT OF APPEALS

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MARIA GROT-SKARYSZEWSKI,

Plaintiff-Appellee,

v

EDWARD SKARYSZEWSKI,

Defendant-Appellant.

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UNPUBLISHED

April 8, 2003

No. 236814

Macomb Circuit Court

LC No. 98-003138-DO

Before: Markey, P.J., and White and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right the judgment of divorce. We affirm.

Defendant challenges an opinion and order of the trial court, in which it determined the parties' interests in the marital home and four rental properties located in Hamtramck, which defendant owned before the marriage. Defendant argues that the trial court erred in determining his share of the equity in the marital home because it incorrectly calculated the total equity in the home, erroneously determined that plaintiff's daughter had an interest in the marital home, and because plaintiff lacked standing to argue on her daughter's behalf. Defendant also argues that the trial court erred in finding that plaintiff was entitled to fifty percent of the marital appreciation of four Hamtramck rental properties.

I. Standards of Review

On appeal, this Court must first review the trial court's findings of fact. *Sparks v Sparks*, 440 Mich 141, 151; 485 NW2d 893 (1992); *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). Findings of fact, such as a trial court's valuations of particular marital assets, will not be reversed unless clearly erroneous. *Stoudemire v Stoudemire*, 248 Mich App 325, 336-337; 639 NW2d 274 (2001). A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with the definite and firm conviction that a mistake has been made. *McNamara v Horner*, 249 Mich App 177, 182-183; 642 NW2d 385 (2002). If the trial court's findings of fact are upheld, this Court must decide whether the dispositive ruling was fair and equitable in light of those facts. *Sparks, supra* at 151-152. The dispositional ruling is discretionary and should be affirmed unless this Court is left with the firm conviction that the division was inequitable. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Sparks, supra* at 152.

## II. Calculation of Equity in the Marital Home

Defendant first argues that the court erred in calculating the amount of equity in the marital home. We disagree. For the purposes of dividing property, although typically valued at the time of trial or the time judgment is entered, a trial court's determination of the proper time for valuation of marital assets is in its discretion. *Byington v Byington*, 224 Mich App 103, 114 n 4; 568 NW2d 141 (1997); *Burkey v Burkey (On Rehearing)*, 189 Mich App 72, 76; 471 NW2d 631 (1991). A trial court's findings of fact are sufficiently specific if the parties are able to determine the approximate values of their individual awards by consulting the verdict along with the valuations to which they stipulated. *Nalevayko v Nalevayko*, 198 Mich App 163, 164; 497 NW2d 533 (1993).

To support his argument, defendant points to a footnote in the trial court's opinion and order, in which the court explained that, in determining the amount of equity in the marital home, it subtracted \$32,250 (the mortgage balance owed) from \$170,000 (the value of the home). Defendant alleges that based on this equation, the court's conclusion that the equity in the marital home amounted to \$134,750 was erroneous because, using the correct mathematical calculation, the equity should amount to \$137,500. However, upon review of the record, we conclude that the trial court's determination of the equity in the marital home was supported by the testimony given at trial as well as the judgment of divorce. Defendant testified that the remaining balance on the mortgage was \$35,260.<sup>1</sup> When this figure (\$35,260) is inserted into the equation in place of the \$32,250 value cited in the trial court's opinion, the total reached is \$134,740. Correspondingly, in the section of the August 27, 2001, judgment of divorce pertaining to the property settlement, the court states that the equity in the marital home amounted to \$134,740. We conclude, therefore, that the footnote calculation in the court's opinion was a typographical error, rather than a miscalculation by the court. The \$10 discrepancy between the trial court's opinion and defendant's testimony and the judgment of divorce is not enough to conclude that the court committed clear error in concluding that the equity in the marital home amounted to \$134,750. After a review of the entire record, this Court is not left with the definite and firm conviction that a mistake has been made.

## III. Plaintiff's Daughter's Interest in the Marital Home Equity

Next, defendant argues that because the deed to the marital home was not admitted into evidence, the trial court was required to make a factual finding regarding Elizabeth Kobylecki, plaintiff's daughter's, ownership interest in the marital home based on the testimony of the parties, neither of whom indicated that Kobylecki had an interest in the property. However, our review of the record shows that defendant admitted at trial that Kobylecki's name was added to the deed as a joint tenant with full rights to survivorship.

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<sup>1</sup> Although the record reveals that defendant later testified that the mortgage balance was \$33,745, and that a stipulated payoff statement showed that as of September 21, 2000, the balance was \$34,442.83, defendant does not argue that the calculation of equity should have been based on these mortgage balance figures. Defendant's testimony supports a finding that the equity should have been based on a mortgage balance of \$35,260.

Parties who hold property as joint tenants with full rights of survivorship hold joint life estates with contingent remainders. *Albro v Allen*, 434 Mich 271, 275; 454 NW2d 85 (1990). While the survivorship feature of the ordinary joint tenancy may be defeated by the act of a cotenant, the dual contingent remainders of the “joint tenancy with full rights of survivorship” are indestructible. *Id.* at 275-276. A cotenant’s contingent remainder cannot be destroyed by an act of another cotenant. *Id.* at 276.

The record indicates that defendant’s Exhibit 2, a copy of the deed to the marital home, was ordered stricken by this Court pursuant to MCR 7.211(E)(2) because it was not presented to the court below. Defendant correctly argues that because the deed for the marital home was not admitted into evidence, it was necessary for the court to rely on the testimony given by the parties to determine Kobylecki’s interest in the home. Defendant’s own testimony, however, reveals that the interest given to Kobylecki was a joint tenancy with full rights of survivorship, an interest indestructible by any action of either defendant or plaintiff. Therefore, we conclude that the court’s finding that Kobylecki owned a one-third interest in the marital home was not clearly erroneous.<sup>2</sup> Unfortunately, it appears that defendant was under the mistaken belief that Kobylecki would not have an ownership interest in the marital home until both he and plaintiff passed away. However, the testimony that Kobylecki was a joint tenant with full rights of survivorship, and the law governing such a tenancy, indicate otherwise.<sup>3</sup>

#### IV. Plaintiff’s Standing

Next, defendant argues that plaintiff cannot appeal on behalf of Kobylecki, who is neither aggrieved nor a party to this action. Defendant argues that plaintiff is attempting to appeal on behalf of Kobylecki by arguing that the lower court’s finding that Kobylecki had a one-third interest in the marital home should not be disturbed. Whether a party has standing is a question of law which we review de novo. *Lee v Macomb Co Bd of Comm’rs*, 464 Mich 726, 734; 629 NW2d 900 (2001).

Although plaintiff is a party to this action, there is no indication that she has made any attempt to appeal the lower court’s decision, either on her own behalf or on behalf of Kobylecki. Rather, it is defendant who has appealed the trial court’s decision. Plaintiff’s argument on appeal, that the trial court’s decision regarding Kobylecki’s ownership interest in the marital

<sup>2</sup> Contrary to defendant’s assertion, the record indicates that the trial court’s questions to defense counsel regarding the names on the deed were simply to clarify what defendant, who apparently speaks with a strong Polish accent, had already testified to.

<sup>3</sup> Defendant also seemingly argues that the trial court’s determination that Kobylecki was entitled to one-third of the equity in the marital home such that only two-thirds was available for division between the parties was inequitable because it essentially gave plaintiff two-thirds of the equity in the home. However, as discussed, the trial court’s finding that Kobylecki was entitled to one-third of the equity in the home was not clearly erroneous. In light of this finding, the trial court’s division of the remaining two-thirds equally between the parties was fair and equitable. We are not left with the firm conviction that the division was inequitable. See *Sands, supra* at 34; *Sparks, supra* at 151-152. We also note that the bulk of the down payment on the marital home was made by plaintiff.

home should not be disturbed, was in direct response to defendant's claim on appeal that the court erred in finding such an interest. Therefore, defendant's contention that plaintiff lacks standing to present her argument on appeal is meritless.

#### V. Plaintiff's Share of the Hamtramck Properties

Finally, defendant argues that the court clearly erred in finding that plaintiff was entitled to fifty percent of the marital appreciation of the four Hamtramck rental properties that were owned by defendant prior to the marriage. The trial court's first consideration when dividing property in divorce proceedings is the determination of marital and separate assets. *Reeves v Reeves*, 226 Mich App 490, 493-494; 575 NW2d 1 (1997). "Generally, the marital estate is divided between the parties, and each party takes away from the marriage that party's own separate estate with no invasion by the other party. However, a spouse's separate estate can be opened for redistribution when one of two statutorily created exceptions is met." *Id.* at 494. One of the exceptions is found in MCL 552.401, which provides that one spouse's separate estate can be invaded if the other spouse "contributed to the acquisition, improvement, or accumulation of the property." MCL 552.401; *Reeves, supra* at 494-495. When one spouse significantly assists in the acquisition or growth of the other spouse's separate asset, the court may consider the contribution as having a distinct value deserving of compensation. *Id.* at 495. However, the marital estate should not include the appreciation of a spouse's premarital assets if that appreciation was "wholly passive." *McNamara, supra* at 184.

It is undisputed that the Hamtramck properties appreciated during the course of the marriage. We conclude that there was sufficient testimony from which the trial court could have determined that plaintiff facilitated the appreciation of the properties by actively managing them during the marriage. Although defendant testified that plaintiff did not contribute in any way to the improvements or maintenance of the rental properties, plaintiff testified that she contributed significantly to those properties during the marriage. Plaintiff testified that she not only encouraged defendant to make the improvements that were made to the properties, but she also visited the Sobieski property at least once a week to deal with the tenants, helped defendant paint and clean the properties, delivered rental agreements to the various tenants, went to court with defendant regarding landlord/tenant disputes, regularly handled phone calls to and from the tenants, collected rent monies, and purchased materials for needed repairs. In addition, Anthony Leshkevich, a tenant of the Lehman property, testified that he personally observed plaintiff at the property twenty to thirty times, doing work such as cleaning the basement. Leshkevich also testified that when he had problems at the Lehman property, he would deal with plaintiff, and on several occasions he observed plaintiff talking to the tenants in the upper unit. Further, Edyta Jarosz, plaintiff's former co-worker, testified that once every couple of weeks, plaintiff would stop by one of the properties to deliver various items. Sylwia Grot, plaintiff's sister-in-law, testified that she went with plaintiff to the Sobieski property on several occasions to help her clean both the inside and outside of the property after tenants had left it in bad condition. Finally, Stephan Kobylecki, plaintiff's son-in-law, who was a mortgage lender, testified that plaintiff was always present during discussions he and defendant had regarding the mortgages for the rental properties. Based on this testimony, we conclude that the trial court did not err in

determining that plaintiff's actions facilitated the appreciation of defendant's Hamtramck rental properties during the marriage and in including this appreciation in the marital estate.<sup>4</sup>

Affirmed.

/s/ Jane E. Markey  
/s/ Helene N. White  
/s/ Brian K. Zahra

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<sup>4</sup> Defendant contends that the most significant testimony in determining whether plaintiff facilitated the appreciation of the rental properties was that of three tenants who testified that plaintiff's involvement in the management and maintenance of the rental properties was minimal. However, as discussed, the testimony of other witnesses indicates that plaintiff substantially contributed to the management and maintenance of the properties. This Court gives special deference to a trial court's findings when based on the credibility of the witnesses. *Draggoo, supra* at 429. Thus, giving such deference to the court, we will not interfere with the credibility determinations made by the court in making its findings of fact on this issue.